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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSE M. MEJIA,

Defendant and Appellant.

E045939

(Super.Ct.No. RIF125693)

OPINION

APPEAL from the Superior Court of Riverside County. Elizabeth Sichel, Judge.
Reversed.

Rex Williams, under appointment by the Court of Appeal, and Howard C. Cohen
for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Gary W. Schons, Assistant Attorney General, and Barry Carlton and
Elizabeth A. Hartwig, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant Jose M. Mejia was found guilty by a jury of evading a peace officer and
causing great bodily injury to a person in violation of Vehicle Code section 2800.3. The

trial court sentenced defendant to the low term of three years in state prison, then suspended execution of the sentence and placed him on probation. He contends on appeal:

1. The evidence did not establish that United States Department of Forestry Officer Christopher Demarest was a peace officer as defined in Part, 2, Title 3, Chapter 4.5 of the Penal Code and as required for a conviction under Vehicle Code section 2800.3.

2. The probation conditions that defendant pay the cost of the presentence probation report, booking fee, probation supervision fees, and a court security fee were unauthorized and must be reversed.

3. The trial court erred by failing to instruct the jury on all of the elements of the offense of violating Vehicle Code section 2800.3.

We conclude that the evidence presented to establish Demarest, a federal law enforcement officer, qualified as a California peace officer was insufficient, and therefore we reverse the judgment.

II

FACTUAL BACKGROUND

Christopher Demarest was employed as a law enforcement officer for the law enforcement branch of the United States Forest Service. He was part of the patrol branch assigned to the Cleveland National Forest and was a sworn peace officer. He patrolled the Trabuco Ranger District of the Cleveland National Forest, which was between

Corona and Camp Pendleton. He was authorized to write traffic citations and make arrests. He wore a uniform and a badge while on duty. He drove a marked patrol unit, which was a white Ford Explorer with bold green striping, “police I.D. panels,” and red and blue light bars on the top.

About 2:25 p.m. on July 30, 2005, Demarest was driving on South Main Divide Road near the Ortega Highway in Riverside County. He observed defendant in his car parked at a turnout near the location. Defendant did not have the required Forest Adventure Pass.

Demarest pulled up behind defendant’s car and stepped out of his vehicle to approach defendant’s car. Defendant quickly drove away. Demarest got back in his vehicle and started following defendant. Defendant illegally crossed the double yellow line at least three times to pass cars while Demarest was following him. Demarest was concerned for public safety and thought defendant might be intoxicated, so he activated some of his overhead lights and turned his siren on and off several times to get defendant to stop.

Defendant did not yield to Demarest’s lights and pulled out onto Ortega Highway right in front of oncoming traffic. One car had to slam on its brakes to avoid a collision. Demarest then activated his full lights and siren. Defendant continued driving at speeds of 50 to 60 miles per hour.

Defendant crossed the double yellow line and passed more cars. Demarest lost sight of defendant around a corner. He then heard a loud “boom.” As he drove around

the corner, he observed defendant's vehicle upside down in the roadway and another car that had suffered damage.

Henry Jenkins was driving on Ortega Highway that day with his wife. At a curve in the highway, he was suddenly struck by defendant's car. Jenkins's face was covered with blood; his wife had no visible injuries. Jenkins could feel that his left arm was broken. He also had terrible pain in his foot but could not see it. He was unable to get out of the car, as the driver's side door was jammed, and he had to be extracted by rescue personnel. Jenkins was transported to the hospital.

Demarest observed Jenkins being removed from his vehicle, and it was clear he had suffered a traumatic injury to his lower leg. As he was extracted from the vehicle (which was teetering on the edge of a cliff), his foot was turned in the wrong direction, and he was covered in blood.

Demarest then turned to defendant's car. He drew his weapon and ordered defendant out of his vehicle. When defendant did not get out, Demarest discovered that he was hiding in the trunk. Firefighters were able to get defendant out, and he was taken to the hospital.

California Highway Patrol Officer Rigoberto Garcia spoke with defendant at the hospital about 4:15 p.m. Defendant told Officer Garcia that he had pulled into the turnout to call his wife on his cellular telephone. When he could not get a signal, he began driving to find one. When defendant turned onto Ortega Highway, he observed Demarest's truck behind him with lights activated and admitted that he started driving at

least at 60 miles per hour in order to evade Demarest. He admitted that he crossed over the double yellow line and passed two cars before the accident. Defendant told Officer Garcia that he tried to evade Demarest because he thought Demarest was a border patrol agent, and he was afraid he would be deported. Defendant appeared coherent.

Jenkins remained in the hospital for four days. His arm was broken in two places. His foot had been dislocated, his heel had been shattered, several other bones had been broken, and he had a laceration on his forehead. He had been advised by doctors that he would have permanent nerve damage. He was in a wheelchair for seven weeks. He had had two surgeries on his foot and was anticipating at least one more.

Defendant called several character witnesses who testified that he was a law-abiding person. Further, about two weeks prior to the accident, defendant had been pulled over by a deputy from the Orange County Sheriff's Department for following too close to another vehicle. Defendant made no attempt to evade the deputy. Defendant was in the process of becoming a legal citizen.

Defendant suffered fractures to both heels, broken ribs, and a fracture to his left hip due to the accident. About 4:00 p.m. that day, while in the hospital, he received morphine for his pain.

Defendant testified on his own behalf. While driving home on South Main Divide Road after work he never saw Demarest's truck or heard a siren. Defendant safely passed two cars on Ortega Highway at a location where it was legal to pass. He did not see Demarest following him while he was driving on Ortega Highway or any time prior to

the accident. He did not recall how the accident occurred. He denied hiding in his trunk after the accident and claimed he complied with Demarest's demands. He did not recall anything that happened at the hospital. He denied he ever told anyone that he was evading Demarest because he thought he was a border patrol agent and he did not want to get deported.

III

SUFFICIENCY OF THE EVIDENCE

Defendant contends that the evidence presented by the People to prove that Demarest qualified as a California peace officer as required for a conviction of violating Vehicle Code section 2800.3 was insufficient. He insists his conviction must be reversed. We agree.

A. *Standard of Review*

“In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves.” (*People v. Guerra* (2006) 37 Cal.4th 1067, 1129, limited by *People v. Rundle* (2008) 43 Cal.4th 76, 151.) Rather, “we review the whole record to determine whether any rational trier of fact could have found the essential elements of the crime . . . beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict -- i.e., evidence that is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury

could reasonably have deduced from the evidence. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.)

B. *Analysis*

Vehicle Code section 2800.1 provides that “[a]ny person who, while operating a motor vehicle and with intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer’s motor vehicle, is guilty of a misdemeanor” Under Vehicle Code section 2800.3, subdivision (a), the provision under which defendant was convicted, the offense becomes a felony where “willful flight or attempt to elude a pursuing peace officer in violation of Section 2800.1 proximately causes serious bodily injury to any person”

“In order to establish the crime, the prosecution must prove that the officer involved was ‘a peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code’ [Penal Code sections 830, et seq.] and must further establish (1) the peace officer’s vehicle was ‘exhibiting at least one lighted red lamp visible from the front’; (2) the peace officer’s vehicle was ‘sounding a siren as may be reasonably necessary’; (3) the peace officer’s vehicle was ‘distinctively marked’; and (4) the peace officer was ‘wearing a distinctive uniform.’ [Citations.]” (*People v. Miller* (2008) 164 Cal.App.4th 653, 665.) Defendant only contends that the People failed to prove Demarest qualified as a California peace officer.

Penal Code section 830 provides that “[a]ny person who comes within the provisions of this chapter and who otherwise meets all standards imposed by law on a

peace officer is a peace officer, and notwithstanding any other provision of law, no person other than those designated in this chapter is a peace officer.” Here, Demarest was employed as a law enforcement officer for the law enforcement branch of the United States Forest Service. A federal employee qualifies as a peace officer under Penal Code section 830.8, subdivision (b) as follows: “Duly authorized federal employees who comply with the training requirements set forth in Section 832 are peace officers when they are engaged in enforcing applicable state or local laws on property owned or possessed by the United States government, or on any street, sidewalk, or property adjacent thereto, and with the written consent of the sheriff or the chief of police, respectively, in whose jurisdiction the property is situated.” (See also Judicial Council of California Criminal Jury Instruction (CALCRIM) No. 2180 (2007-2008 ed.) [the instruction (not given here) provides that “[a] person employed by _____, *<insert name of agency that employs peace officer, e.g. ‘the Department of Fish and Game’>* is a *peace officer* if _____ *<insert description of facts necessary to make employee a peace officer, e.g. ‘designated by the director of the agency as a peace officer’>*,” brackets omitted].) Penal Code section 832, subdivision (a) requires in pertinent part, that “[e]very person described in this chapter as a peace officer shall satisfactorily complete an introductory course of training prescribed by the Commission on Peace Officer Standards and Training.”

In the trial court, the People and the defendant apparently assumed that Demarest qualified as a California peace officer, and the People presented very little evidence to

prove he was a peace officer. As a federal law enforcement officer, as discussed, *ante*, the People had to prove that he met specific requirements in order to qualify as a peace officer under the California Penal Code. The only evidence presented by the People that Demarest was a peace officer was his uncontested testimony that he was a sworn “peace officer.” However, as aptly noted by defendant at oral argument, there are federal peace officers. (See e.g. Penal Code section 13300, subd. (c)(7) [referring to United States peace officers]; *Pogue v. Allison* (D.Wyo. 1994) 851 F.Supp. 1536, 1539 [referring to federal peace officers].) Demarest could have been referring to the fact he was a sworn peace officer for the United States Department of Forestry. Without further testimony from Demarest, the evidence of this element was insufficient.

In addition, the People presented no evidence that Demarest had met the training requirements or had the proper authorization from the local sheriff or chief of police as was required to qualify him as a California Peace Officer. (Pen. Code, § 830.8, subd. (b).) Although Demarest testified that he was authorized to write citations and tickets, no evidence was presented that he was authorized *by the local sheriff or chief of police* to write these tickets. And there was never any evidence presented that Demarest had completed the required training to qualify as a California peace officer.

As stated in *People v. Miller, supra*, 164 Cal.App.4th at page 667, “. . . ‘the prosecution simply failed to close a sizeable evidentiary gap mandated by the terms of the statute [the defendant] allegedly violated.’ [Citation.]” The People had the burden of proving every element of the charged crime beyond a reasonable doubt. (Pen. Code,

§ 1096; *People v. Wyatt* (2008) 165 Cal.App.4th 1592, 1601.) The uncontested testimony by Demarest here that he was a peace officer who could make arrests was not enough to meet the statutory elements of violating Vehicle Code section 2800.3. The People here simply failed to prove that Demarest qualified as a California peace officer. This is unfortunate considering defendant's egregious behavior and the serious injuries suffered by the victims in this case due to defendant's actions.

Our finding that the evidence was insufficient to uphold the conviction is "equivalent to an acquittal" and retrial is barred under the federal double jeopardy clause. (*People v. Miller, supra*, 163 Cal.App.4th at p. 668; see also *People v. Seel* (2004) 34 Cal.4th 535, 550.) Since we reverse for insufficiency of the evidence, we need not address defendant's further claims raised on appeal.

VII

DISPOSITION

The judgment is reversed.

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RICHLI

Acting P.J.

We concur:

GAUT

J.

KING

J.